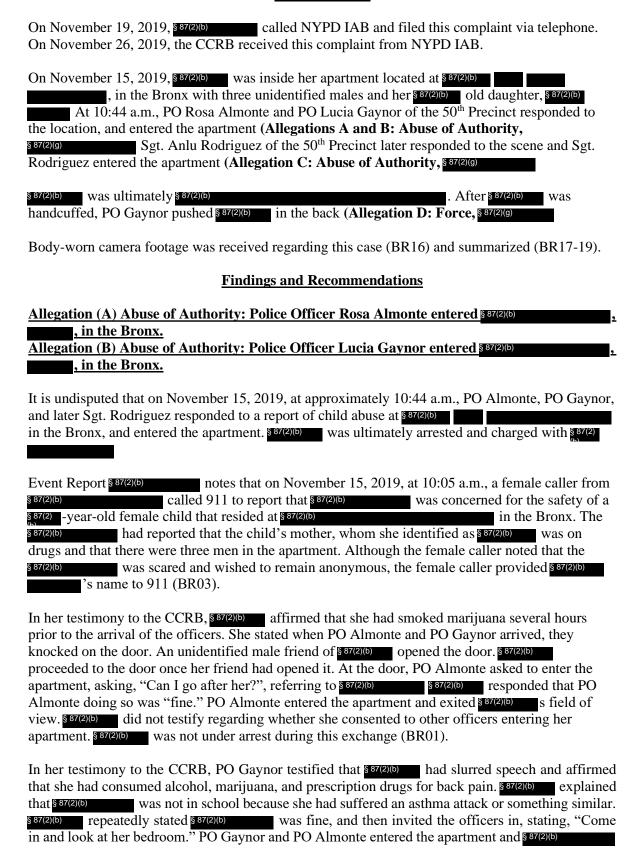
CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	✓ For	ce		Discourt.	☐ U.S.
Zachary Herman		Squad #12	201910248	☑ Abu	se		O.L.	☐ Injury
Incident Date(s)		Location of Incident:		Preci	nct:	18	Mo. SOL	EO SOL
Friday, 11/15/2019 10:44 AM		§ 87(2)(b)		50		5/	15/2021	12/30/2021
Date/Time CV Reported		CV Reported At:	How CV Reported:	Date	e/Time Received at CCRB			RB
Tue, 11/19/2019 10:15 AM		IAB	Phone	Tue, 11/26/2019 11:39 AM			I	
Complainant/Victim	Type	Home Addre	ess	•				
Witness(es) Home Address								
Subject Officer(s)	Shield	TaxID	Command					
1. POF Lucia Gaynor	00314	955148	050 PCT					
2. POF Rosa Almonte	02432	947191	050 PCT					
3. SGT Anlu Rodriguez	03118	936655	050 PCT					
Witness Officer(s)	Shield N	o Tax No	Cmd Name					
1. POF Rasha Jamsheer	25858	964073	050 PCT					
Officer(s)	Allegatio	on			Inves	tiga	tor Recon	nmendation
A.POF Rosa Almonte	Abuse: P	olice Officer Rosa Alm						
P POET ' C		1' O.C. I ' C	in the Bronx.					
B.POF Lucia Gaynor	Abuse: Police Officer Lucia Gaynor entered in the Bronx.							
C.SGT Anlu Rodriguez	Abuse: Sergeant Anlu Rodriguez entered § 87(2)(b) in the Bronx.							
D.POF Lucia Gaynor	Force: A	t § 87(2)(b) Lynor used physical forc	in the Bronx, Police e against § 87(2)(b)	Officer				

Case Summary



bedroom (BR06).

PO Almonte testified that she did not recall if officers requested to enter the apartment. PO Almonte entered the apartment because she was concerned for the safety of \$87(2)(6) PO Almonte was concerned for \$87(2)(6) Safety because \$87(2)(6) Salurred her words and stumbled when she walked to the officers when they stood at the door to the apartment. \$87(2)(6) did not respond coherently to the questions PO Almonte and PO Gaynor asked her at the door. These factors PO Almonte to conclude that \$87(2)(6) was intoxicated. Additionally, the apartment smelled like marijuana once the door was opened (BR08).

BWC footage from the incident does not depict the initial entry to the apartment. The footage depicts providing consent for officers to enter the apartment at 3m14s in PO Almonte's video, this occurs after PO Almonte was already partially inside the apartment. At 44s in PO Gaynor's BWC footage, PO Gaynor is depicted walking down the hall from the apartment. She then makes a radio transmission in which she states: "Hey, so I have a possible child abuse case: Mom is completely fucking high out her mind. They are smoking marijuana. Super, like, the, it's like emitting a lot. The representation of the series of the

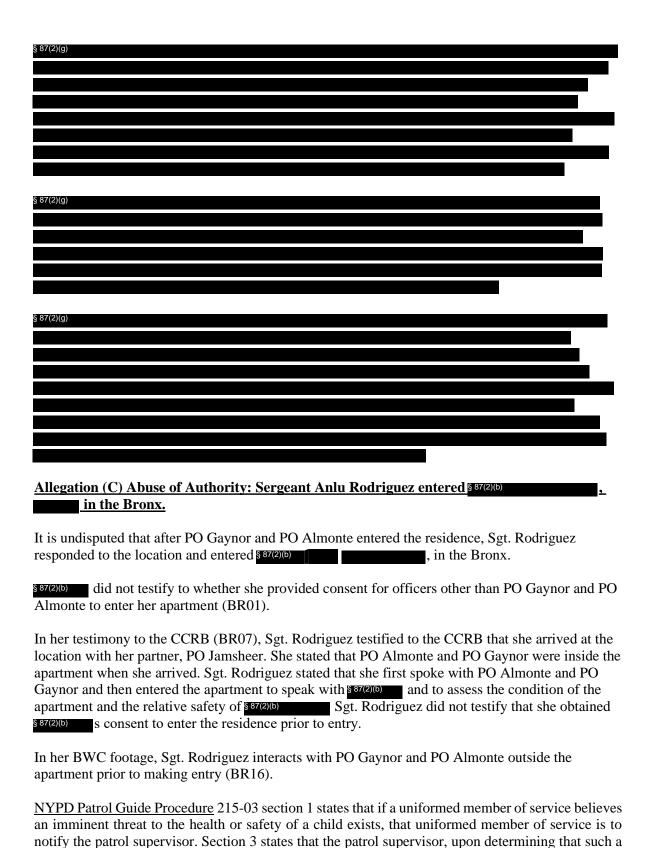
The arrest related to this incident is sealed (BR 26). The 50th Precinct Command Log and an entry from PO Gaynor's Memo Book list \$87(2)(b) s top charge as \$87(2)(b) (BR 23). There is no further information about the arrest.

<u>People v Musto</u>, 106 A.D.3d 1380 (2013), quoting <u>People v. Mitchell</u>, states that when officers have reasonable grounds to believe that there is an emergency is at hand and an immediate need for their assistance, and if there is a reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched, then officers are permitted to enter a dwelling without a search warrant (BR20).

<u>People v. Gonzalez</u>, 39 N.Y.2d 12 states that consent is voluntary when it is "a true act of the will, an unequivocal product of an essentially free and unconstrained choice." It further states that "voluntariness is incompatible with official coercion, actual or implicit, overt or subtle" (BR21).

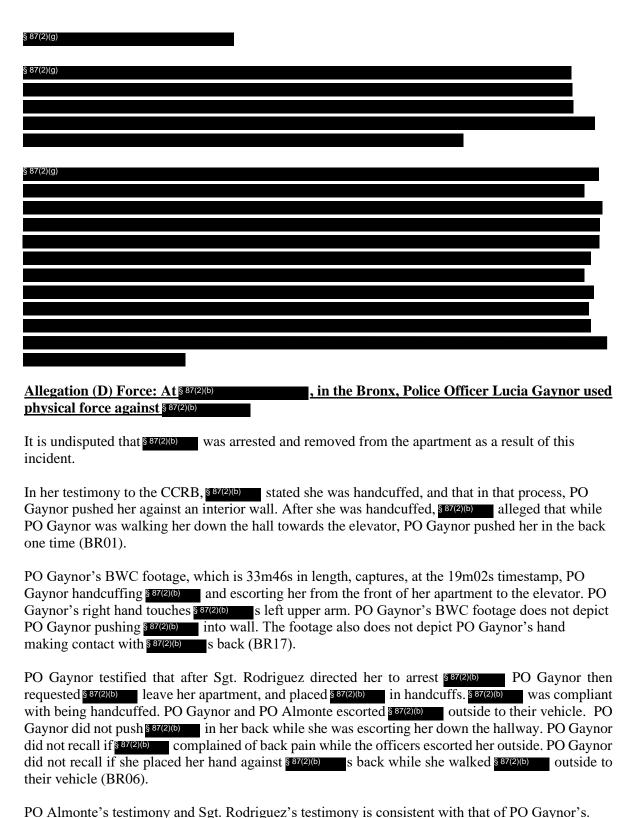
The Right to Know Act, enshrined in <u>NYC Administrative Code</u> 14-173(a), which went into effect on May 19, 2018 (BR 25), requires that officers who seek to obtain consent to enter a residence do so by "articulating, using plain and simple language delivered in a non-threatening manner, that the person who is the subject of the search is being asked to voluntarily, knowingly, and intelligently consent to such search, and explaining that such search will not be conducted if such person refuses to provide consent to such search." Officers are to refrain from entering where consent has not been obtained in this manner.

§ 87(2)(g)		
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§ 87(2)(g)		



§ 87(2)(g)

danger exists to a minor child, is to direct a member of service to take the child into custody (BR14).



10 7 minorite 3 testimony and 3gt. Rodriguez 3 testimony is consistent with that of 10 daynor 3.

BWC footage is consistent with PO Gaynor's version of events, particularly in that she did not push against a wall or while walking.

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which §87(2)(b) has been a party (BR22).
- PO Lucia Gaynor has been a member of service for six years, and this is the first CCRB complaint to which she has been a party.
- PO Rosa Almonte has been a member of service for eleven years and has been named as a subject in one CCRB complaint and two allegations, none of which were substantiated.
- Sgt. Rodriguez has been a member of service for fifteen years and has been named as a subject in five CCRB complaints and six allegations, none of which were substantiated.

Mediation, Civil and Criminal Histories

- §87(2)(b) declined to mediate this complaint.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.:

12

• As of May 6, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (BR11).

Investigator: Zachary Herman Investigator Zachary Herman 01/19/2021
Signature Print Title & Name Date

Squad Leader:Carlmais JohnsonIM Carlmais JohnsonOctober 6, 2021SignaturePrint Title & NameDate

Reviewer: _____ Signature Print Title & Name Date